

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ALISHA L. HESS,

Plaintiff,

v.

CAROLYN W. COLVIN,  
Commissioner of Social Security,

Defendant.

No. CV-12-0487-JTR

ORDER GRANTING  
DEFENDANT’S MOTION  
FOR SUMMARY JUDGMENT

**BEFORE THE COURT** are cross-Motions for Summary Judgment. ECF Nos. 16, 18. Attorney Maureen J. Rosette represents Alisha Lynne Hess (Plaintiff); Special Assistant United States Attorney Willy M. Le represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and briefs filed by the parties, the Court **GRANTS** Defendant’s Motion for Summary Judgment and **DENIES** Plaintiff’s Motion for Summary Judgment.

**JURISDICTION**

Plaintiff filed an application for a period of disability and Disability Insurance Benefits on September 10, 2009, alleging disability since January 26, 2009, due to her “bipolar condition.” Tr. 165. The application was denied initially

1 and upon reconsideration. Administrative Law Judge (ALJ) Caroline Siderius held  
2 a hearing on January 11, 2011, Tr. 59-83, and issued an unfavorable decision on  
3 January 27, 2011, Tr. 43-55. The Appeals Council denied review on June 5, 2012.  
4 Tr. 1-6. The ALJ's January 2011 decision became the final decision of the  
5 Commissioner, which is appealable to the district court pursuant to 42 U.S.C. §  
6 405(g). Plaintiff filed this action for judicial review on July 26, 2012. ECF No. 1,  
7 5.

### 8 **STATEMENT OF FACTS**

9 The facts of the case are set forth in the administrative hearing transcript, the  
10 ALJ's decision, and the briefs of the parties. They are only briefly summarized  
11 here.

12 Plaintiff was born on March 27, 1980, and was 28 years old on the alleged  
13 onset date, January 26, 2009. Tr. 160. Plaintiff indicated she completed the 12<sup>th</sup>  
14 grade in high school, but has taken no college classes. Tr. 71-72, 169. She  
15 reported that, while in school, she was constantly in trouble for "acting out and  
16 mouthing off." Tr. 67. She testified at the administrative hearing she last worked  
17 as a data entry clerk in January 2009 and stopped working because she went on  
18 long-term disability due to symptoms stemming from a bi-polar disorder. Tr. 63-  
19 64. She stated she cannot hold a job because she is anxious and does not handle  
20 stress well. Tr. 65. She indicated the longest job she has had lasted for a year and  
21 a half and it ended with her getting fired for insubordination, following an  
22 argument with her manager. Tr. 66. She testified she is unable to go back to work  
23 because she cannot handle stress. Tr. 72.

24 Plaintiff indicated she does not get along well with others because she comes  
25 across as abrasive. Tr. 72. She stated she takes criticism personally and tends to  
26 get angry and lash out. Tr. 72. She also stated she misses an excessive amount of  
27 work due to days she stays in bed because she does not feel well. Tr. 72. Upon  
28 questioning by her attorney, Plaintiff indicated she does not maintain focus well.

Tr. 73. As a result, she is able to read, but does not retain the information well. Tr. 74.

Plaintiff testified she started seeing a psychologist, Dr. Neils, in 2009. Tr. 69. She first saw him every week, it then moved to every month, and she currently sees him on an “as needed” basis. Tr. 69. Plaintiff testified at the administrative hearing that when she first started seeing Dr. Neils, he diagnosed her as bi-polar: “with my history that I explained to him . . . [H]e told me that everything that I had described to him, he figured [it] was . . . bi-polar disorder.” Tr. 64.

Plaintiff stated that, on a typical day, if she wakes up feeling “okay,” she will get up, take a shower, eat something, and pick up her apartment a little. Tr. 71. If she does not wake up feeling well, she will stay in bed all day. Tr. 71. She indicated she did not really have friends, but, once or twice a week, she would visit her brother and/or go to her parent’s home. Tr. 71, 74. She testified that if she feels like doing household chores, she can do them, including vacuuming, doing the laundry and cleaning. Tr. 74. She stated it was “just a matter of whether or not I feel like doing it.” Tr. 74.

#### **ADMINISTRATIVE DECISION**

The ALJ found that Plaintiff had not engaged in substantial gainful activity since January 26, 2009, the alleged onset date. Tr. 45. The ALJ determined, at step two, that Plaintiff had a severe impairment of bipolar disorder. Tr. 45. At step three, the ALJ found Plaintiff’s mental impairment did not meet or medically equal a listed impairment. Tr. 47. The ALJ assessed Plaintiff’s RFC and determined that she could perform a full range of work at all exertional levels but with the following nonexertional limitations: she can perform simple, repetitive 1 to 3 step tasks, but no detailed work and she is capable of tolerating only occasional changes in the work setting and superficial contact with the public and co-workers. Tr. 49.

At step four, the ALJ concluded that, considering Plaintiff’s RFC, and based

1 on the testimony of the vocational expert, Plaintiff was able to perform her past  
2 relevant work as a machine operator II, data entry clerk, and wire harness  
3 assembler. Tr. 54-55. The ALJ thus determined that Plaintiff was not under a  
4 disability within the meaning of the Social Security Act at any time from January  
5 26, 2009, the alleged onset date, through the date of the ALJ's decision, January  
6 27, 2011. Tr. 55.

### 7 STANDARD OF REVIEW

8 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the Court set  
9 out the standard of review:

10 A district court's order upholding the Commissioner's denial of benefits is  
11 reviewed de novo. *Harman v. Apfel*, 211 F.3d 1172, 1174 (9th Cir. 2000). The  
12 decision of the Commissioner may be reversed only if it is not supported by  
13 substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d  
14 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a  
15 mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way,  
16 substantial evidence is such relevant evidence as a reasonable mind might accept  
17 as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401  
18 (1971). If the evidence is susceptible to more than one rational interpretation, the  
19 Court may not substitute its judgment for that of the Commissioner. *Tackett*, 180  
20 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599  
21 (9th Cir. 1999).

22 The ALJ is responsible for determining credibility, resolving conflicts in  
23 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
24 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed de novo,  
25 although deference is owed to a reasonable construction of the applicable statutes.  
26 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

27 It is the role of the trier of fact, not this Court, to resolve conflicts in  
28 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one

1 rational interpretation, the Court may not substitute its judgment for that of the  
 2 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579  
 3 (9th Cir. 1984). Nevertheless, a decision supported by substantial evidence will  
 4 still be set aside if the proper legal standards were not applied in weighing the  
 5 evidence and making the decision. *Browner v. Secretary of Health and Human*  
 6 *Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence exists to  
 7 support the administrative findings, or if conflicting evidence exists that will  
 8 support a finding of either disability or non-disability, the Commissioner's  
 9 determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th  
 10 Cir. 1987).

### 11 SEQUENTIAL EVALUATION PROCESS

12 The Commissioner has established a five-step sequential evaluation process  
 13 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),  
 14 416.920(a); *see Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one  
 15 through four, the burden of proof rests upon the claimant to establish a prima facie  
 16 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This  
 17 burden is met once a claimant establishes that a physical or mental impairment  
 18 prevents him from engaging in his previous occupation. 20 C.F.R. §§  
 19 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the  
 20 ALJ proceeds to step five, and the burden shifts to the Commissioner to show that  
 21 (1) the claimant can make an adjustment to other work; and (2) specific jobs exist  
 22 in the national economy which claimant can perform. *Batson v. Commissioner of*  
 23 *Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make  
 24 an adjustment to other work in the national economy, a finding of "disabled" is  
 25 made. 20 C.F.R. §§ 404.1520(a)(4)(i-v), 416.920(a)(4)(i-v).

### 26 ISSUES

27 The question presented is whether substantial evidence exists to support the  
 28 ALJ's decision denying benefits and, if so, whether that decision is based on

1 proper legal standards. Plaintiff contends the ALJ erred because she is more  
2 limited from a psychological standpoint than what was determined by the ALJ.  
3 ECF No. 16 at 9. Plaintiff specifically argues that the ALJ failed to properly  
4 consider the opinion of treating psychologist Rob Neils, Ph.D., and that new  
5 evidence submitted to the Appeals Council, a report completed by Debra D.  
6 Brown, Ph.D., more than seven months after the ALJ's decision in this case,  
7 further evidences she is more limited from a psychological standpoint than what  
8 was determined by the ALJ. ECF No. 16 at 9-15.

### 9 DISCUSSION

#### 10 A. Dr. Neils

11 Plaintiff argues that the ALJ should have accorded greater weight to the  
12 opinions of treating psychologist Dr. Neils when assessing Plaintiff's mental RFC.  
13 The undersigned determines that the ALJ provided specific and legitimate reasons,  
14 supported by substantial evidence, for not according significant weight to Dr. Neils  
15 opinions. *See infra*.

16 In disability proceedings, a treating physician's opinion carries more weight  
17 than an examining physician's opinion, and an examining physician's opinion is  
18 given more weight than that of a non-examining physician. *Benecke v. Barnhart*,  
19 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
20 1995). If the treating or examining physician's opinions are not contradicted, they  
21 can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If  
22 contradicted, the opinion can only be rejected for "specific" and "legitimate"  
23 reasons that are supported by substantial evidence in the record. *Andrews v.*  
24 *Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995). Historically, the courts have  
25 recognized conflicting medical evidence, the absence of regular medical treatment  
26 during the alleged period of disability, and the lack of medical support for doctors'  
27 reports based substantially on a claimant's subjective complaints of pain as  
28 specific, legitimate reasons for disregarding a treating or examining physician's

1 opinion. *Flaten v. Secretary of Health and Human Servs.*, 44 F.3d 1453, 1463-64  
2 (9th Cir. 1995).

3 Plaintiff began seeing Dr. Neils on February 4, 2009. Tr. 252. On January  
4 20, 2010, Dr. Neils reported he had seen Plaintiff on two dozen separate occasions  
5 since he first began treating her in February 2009.<sup>1</sup> Tr. 252. In February 2009, Dr.  
6 Neils diagnosed Plaintiff with mood disorder, NOS, and rule out provisional  
7 bipolar disorder “[g]iven her description of symptoms,” which she described as  
8 “extreme mood swings from ‘really happy’ to severely depressed, cycling back and  
9 forth through ‘every few days.’” Tr. 255. On March 4, 2009, Dr. Neils reported  
10 that “[g]iven her description of symptoms,” a diagnosis of bipolar disorder, most  
11 recent episode depressed, severe, with mood congruent psychotic features, was  
12 appropriate. Tr. 254. It was again noted that Plaintiff described “extreme mood  
13 swings from ‘really happy’ to severely depressed, cycling back and forth though  
14 ‘every few days.’” Tr. 254. Dr. Neils indicated Plaintiff was on temporary  
15 disability at the time, but was scheduled to return to work on March 22, 2009. Tr.  
16 254.

17 On January 20, 2010, Dr. Neils diagnosed Plaintiff with bipolar disorder,  
18 most recent episode depressed, severe, with mood congruent psychotic features;  
19 panic disorder with moderate agoraphobia; and personality disorder, NOS with  
20 borderline traits. Tr. 252. Dr. Neils indicated Plaintiff described symptoms of  
21 extreme mood swings, pressured speech, flight of ideas, over-spending on useless  
22 items, delusions, fear that others can invade her thoughts, daily episodes of being  
23 unable to concentrate or remember things, unprovoked agitation, insomnia and  
24 hypersomnia, hearing unintelligible sounds, and panic attacks with moderate  
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26 <sup>1</sup>As noted by the ALJ, although Dr. Neils stated on January 20, 2010, that he  
27 had seen Plaintiff 24 times since he first began seeing her in February 2009, chart  
28 notes were not included to substantiate the claim. Tr. 53.



1 agoraphobia. Tr. 252. It was noted that a Millon Clinical Multiaxial Inventory-III  
2 test revealed extreme elevations across Personality Patterns and Clinical  
3 Syndromes. Tr. 252. Dr. Neils also indicated Plaintiff had lost many jobs due to  
4 her multiple cognitive impairments, her inability to relate adequately with co-  
5 workers and supervisors and her unreliability to show up and get her assigned tasks  
6 done correctly and efficiently.<sup>2</sup> Tr. 253.

7 On December 20, 2010, Dr. Neils reported he had seen Plaintiff on an “as  
8 needed basis” since January 22, 2009. Tr. 291. Dr. Neils indicated Plaintiff had a  
9 moderate to marked limitation in her ability to understand and remember detailed  
10 instructions and does not sustain routine without special supervision and, even with  
11 special supervision, has to be monitored closely. Tr. 291. He noted that Plaintiff  
12 reported she had been late for every job she has ever had, has been fired from jobs  
13 because of her absenteeism or tardiness, and has been in trouble for work  
14 avoidance, falling asleep on the job, slow work rate, and inappropriate behavior at  
15 her workstation. Tr. 291. It was further reported that Plaintiff used any and all  
16 excuses to spend time with other coworkers rather than do work, she not only  
17 failed to produce but also distracted others from producing work, and she was  
18 rarely able to complete a two-hour work shift without interruptions from  
19 psychologically based symptoms.<sup>3</sup> Tr. 292. Dr. Neils completed a Mental Medical  
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21 <sup>2</sup>As noted by the ALJ, Dr. Neils’ report of Plaintiff’s work issues is provided  
22 without any corroborating evidence. Tr. 54. Plaintiff also failed to provide the  
23 ALJ with employment records to verify her alleged work deficiencies. Tr. 53.

24 <sup>3</sup>Again, Dr. Neils’ report of Plaintiff’s alleged work deficiencies is provided  
25 without any corroborating evidence, other than Plaintiff’s self-report. Tr. 54.  
26 Plaintiff additionally failed to provide the ALJ with employment records to  
27 substantiate her allegations of insubordination, excessive absenteeism and poor  
28 work ethic. Tr. 53.



1 Source Statement opining Plaintiff had several marked and severe mental  
2 limitations. Tr. 294-296.

3 The ALJ provided several bases to reject Dr. Neils' opinion that Plaintiff had  
4 significant mental limitations. Tr. 50-54.

5 The ALJ indicated, inconsistent with Dr. Neils' opinions, that Plaintiff's  
6 other treatment providers had found her to be pleasant and cooperative, oriented to  
7 person, place and situation, and appeared to have normal judgment and memory  
8 during the relevant time period at issue. Tr. 52, 234-251. Plaintiff's treating  
9 physician Alan Skidmore, M.D., reported Plaintiff was feeling less angry and  
10 irritable on April 1, 2009. Tr. 237. He described Plaintiff as pleasant and her  
11 affect as not depressed. Tr. 237. On April 22, 2009, Dr. Skidmore indicated he  
12 got the impression that Plaintiff's issue was more of a personality disorder, rather  
13 than a bipolar affective disorder, because "her affect was not congruent with how  
14 severe she stated her mood was." Tr. 236. Dr. Skidmore reiterated this opinion on  
15 May 13, 2009, and noted that Plaintiff reported less anger and no panic attacks. Tr.  
16 46, 235. Dr. Skidmore indicated on July 14, 2009, that Plaintiff's migraine  
17 headaches were well controlled and there were no non-psychologically related  
18 medical problems which would prevent her from working. Tr. 46, 234. He  
19 described Plaintiff as a pleasant, young female with a somewhat flat affect. Tr.  
20 234. These reports from Plaintiff's treatment providers are inconsistent with the  
21 significant limitations assessed by Dr. Neils.

22 The ALJ also noted that Dr. Neils' conclusions are primarily based on  
23 Plaintiff's subjective self-reports or self-administered depression surveys without  
24 any evidence substantiating her alleged difficulties. Tr. 54. It is apparent from a  
25 review of Dr. Neils' records, as outlined above, that Dr. Neils based the majority of  
26 his opinion evidence on Plaintiff's self-reported symptoms and self-reported  
27 medical history without any outside corroboration. Plaintiff's testimony at the  
28 administrative hearing further supports this conclusion. Plaintiff testified that

1 when she first started seeing Dr. Neils, he immediately diagnosed her as bi-polar:  
2 “with my history that I explained to him . . . [H]e told me that everything that I  
3 had described to him, he figured [it] was . . . bi-polar disorder.” Tr. 64.

4 With respect to Plaintiff’s credibility, the ALJ provided several reasons for  
5 discounting plaintiff’s subjective complaints, Tr. 51-53, and those reasons are fully  
6 supported by the record. Plaintiff does not contest the ALJ’s credibility finding in  
7 this case. *See Kim v. Kang*, 154 F.3d 996, 1000 (9th Cir. 1998); *United States v.*  
8 *Ullah*, 976 F.2d 509, 514 (9th Cir. 1992) (holding that issues not specifically and  
9 distinctly contested in a party’s opening brief are considered waived).

10 Consequently, it is undisputed that the ALJ properly determined that Plaintiff was  
11 not fully credible in this matter. Since Plaintiff was properly found by the ALJ to  
12 be not entirely credible, the ALJ appropriately accorded little weight to Dr. Neils’  
13 medical reports because they were primarily based on Plaintiff’s non-credible  
14 subjective complaints. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir.  
15 2001) (a physician’s opinion premised primarily on a claimant’s subjective  
16 complaints may be discounted where the record supports the ALJ’s discounting of  
17 the claimant’s credibility); *Morgan v. Comm’r. of Soc. Sec. Admin.*, 169 F.3d 595,  
18 602 (9th Cir. 1999) (the opinion of a physician premised to a large extent on a  
19 claimant’s own account of symptoms and limitations may be disregarded where  
20 they have been properly discounted).

21 The ALJ additionally noted Plaintiff’s conservative treatment undermined  
22 Dr. Neils’ opinion. Tr. 50-51. *See Rollins v. Massanari*, 261 F.3d 853, 856 (9th  
23 Cir. 2001) (a conservative course of treatment is not consistent with a finding that a  
24 claimant is totally disabled under the Act). The ALJ noted that Plaintiff only saw  
25 Dr. Neils on an “as needed” basis. Tr. 51. Plaintiff reported seeing Dr. Neils  
26 weekly at first, then once a month, and then “as needed.” Tr. 50. This progression  
27 appears to show an improvement of Plaintiff’s symptoms, and the overall  
28 conservative course of treatment is not consistent with the severe limitations

1 reported by Dr. Neils.

2 The ALJ also stated that Plaintiff would shorten her use of medications  
3 despite medical reports indicating that they were of benefit,<sup>4</sup> and that Plaintiff had  
4 failed to comply with her doctor's recommendation to exercise.<sup>5</sup> Tr. 51.  
5 Noncompliance with medical care or unexplained or inadequately explained  
6 reasons for failing to seek medical treatment cast doubt on a claimant's subjective  
7 complaints. 20 C.F.R. §§ 404.1530, 426.930; *Fair v. Bowen*, 885 F.2d 597, 603  
8 (9th Cir. 1989). The fact that Plaintiff failed to comply with the medical treatment  
9 prescribed by Dr. Neils discounts her claim of disabling limitations.

10 The ALJ also referenced Plaintiff's apparent lack of motivation to work. Tr.  
11 53. The Ninth Circuit has recognized that the ALJ may properly consider the issue  
12 of motivation. *Matney v. Sullivan*, 981 F.2d 1016, 1020 (9th Cir. 1992). Dr. Neils  
13 reported on January 20, 2010, that Plaintiff had a "strong disability conviction" and  
14 "lackadaisical attitude" even when her medications mostly controlled her  
15 symptoms. Tr. 54, 253. As noted by the ALJ, Plaintiff reported to Dr. Neils on  
16 March 4, 2009, that she was scheduled to return to work from temporary disability  
17 on March 22, 2009, but would "bolt" if she could find another job with similar  
18 good pay. Tr. 254. Plaintiff also testified at the administrative hearing that she

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20 <sup>4</sup>Dr. Neils reported on December 2010, that a change in medications helped  
21 control Plaintiff's anger but she did not continue with the medication as prescribed.  
22 Tr. 293.

23 <sup>5</sup>Plaintiff testified at the administrative hearing that she tried to comply with  
24 her doctor's recommendation in December 2008 to walk for 15 minutes, three  
25 times a day, but was unable to comply due to a broken ankle in March 2010. Tr.  
26 51. Not only is there no evidence in the record to substantiate a broken ankle, but  
27 there is also no explanation provided for Plaintiff not being compliant for the 15  
28 months prior to the alleged broken ankle. Tr. 51-52.

1 could perform household chores, including vacuuming, doing the laundry and  
2 cleaning, it was “just a matter of whether or not I feel like doing it.” Tr. 74. It  
3 would appear that, inconsistent with her claims of disabling limitations, Plaintiff  
4 believed she could perform work activities, but, as indicated by the ALJ, lacked  
5 motivation to do so.

6 The ALJ additionally found Dr. Neils’ conclusions were inconsistent with  
7 Plaintiff’s activities of daily living. Tr. 54. An ALJ may discount a doctor’s  
8 opinion of social and cognitive limitations to the extent it conflicts with the  
9 claimant’s daily activities. *See Morgan v. Comm’r of the Soc. Sec. Admin.*, 169  
10 F.3d 595, 601-602 (9th Cir. 1999) (“The ALJ noted, contrary to Dr. Reaves’s  
11 conclusion that Morgan suffered from ‘marked limitations,’ that the evidence  
12 established that Morgan adequately copes with the social aspects of daily living,  
13 continues to maintain some friendships, and manifests above-average intelligence  
14 and other cognitive abilities.”). The ALJ noted that Plaintiff was capable of  
15 frequently visiting her family, went binge shopping/impulse shopping on occasion,  
16 and had no complaints from her care providers of inability to get along with the  
17 providers or their staff. Tr. 51. The ALJ appropriately discounted Dr. Neils’  
18 opinion as inconsistent with Plaintiff’s activities of daily living.

19 Based on the foregoing, the ALJ provided specific and legitimate reasons,  
20 supported by substantial evidence, for according little weight to Dr. Neils’ opinion.  
21 The ALJ determined that Plaintiff retained the RFC to perform a full range of work  
22 at all exertional levels but with the following nonexertional limitations: she can  
23 perform simple, repetitive 1 to 3 step tasks, but no detailed work and she is capable  
24 of tolerating only occasional changes in the work setting and superficial contact  
25 with the public and co-workers. Tr. 49. The evidence of record does not support a  
26 more restrictive mental RFC assessment in this case.

27 **B. Dr. Brown**

28 Plaintiff also argues that new evidence submitted to the Appeals Council

1 following the ALJ's January 27, 2011, decision, a report completed by Debra D.  
2 Brown, Ph.D., on September 7, 2011, Tr. 19-24,<sup>6</sup> further evidences that she is more  
3 limited from a psychological standpoint than what was determined by the ALJ.  
4 ECF No. 16 at 14-15.

5 Dr. Brown filled out a Psychological/Psychiatric Evaluation form indicating  
6 Plaintiff had severe depression; an inability to pay attention and concentrate, focus  
7 on details, or think logically and linearly; sensitivity to criticism, difficulty  
8 working in an environment where unconditional positive regard is not guaranteed;  
9 hyper-reactivity to fear triggers, resulting in cessation of work, distraction of  
10 coworkers, high absenteeism and a likelihood of walking off the job without  
11 warning; hypervigilance in relationships with supervisors and coworkers and  
12 sensitivity to criticism; over-reactivity to even minor criticism or perceived  
13 criticism; and work tardiness and excessive absenteeism. Tr. 20.

14 The relevant time period in this action is from January 26, 2009 (the alleged  
15 onset date) through January 27, 2011 (the date of the ALJ's determination in this  
16 case). Evidence from outside of this period of time is irrelevant to the extent that it  
17 does not address claimant's medical status during the relevant period at issue in  
18 this action. *See Fair v. Bowen*, 885 F.2d 597, 600 (9th Cir. 1989). Dr. Brown's  
19 assessment took place more than seven months after the ALJ's decision in this  
20 case, and there is no indication Dr. Brown's report addresses Plaintiff's functioning  
21

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22 <sup>6</sup>This "new evidence" is part of the record for this Court's review. *See*,  
23 *Harman v. Apfel*, 211 F.3d 1172, 1179-1180 (9th Cir. 2000) (the district court  
24 properly considered new evidence submitted to the Appeals Council because the  
25 Appeals Council addressed those materials in the context of denying review);  
26 *Ramirez v. Shalala*, 8 F.3d 1449, 1451-1452 (9th Cir. 1993) (the district court  
27 appropriately reviewed all materials, including new evidence not before the ALJ,  
28 after the Appeals Council declined to accept review in light of the entire record).

1 during the relevant time period. Furthermore, as with Dr. Neils, the alleged work  
2 deficiencies noted in Dr. Brown's September 2011 report are not corroborated by  
3 any evidence of record. Plaintiff did not provide the ALJ or the Appeals Council  
4 with employment records to verify her allegations of work deficiencies. Therefore,  
5 the work issues indicated by Dr. Brown are apparently drawn from Plaintiff's non-  
6 credible self-report. *See Tonapetyan*, 242 F.3d at 1149 (a physician's opinion  
7 premised primarily on a claimant's subjective complaints may be discounted where  
8 the record supports the ALJ's discounting of the claimant's credibility). As noted  
9 by Defendant, there is no evidence Dr. Brown relied on any other evidence,  
10 besides Plaintiff's non-credible statements and the examination findings which  
11 were essentially normal.<sup>7</sup> Tr. 24. Dr. Brown's September 2011 report is of little  
12 evidentiary value as it does not materially change or otherwise affect the evidence  
13 supporting the ALJ's determination in this case. The ALJ's RFC determination  
14 remains supported by substantial evidence of record.

15 The ALJ's RFC determination is in accord with the weight of the record  
16 evidence and free of error. The record does not support a more restrictive finding  
17 than Plaintiff being restricted to work involving no more than simple, repetitive 1  
18 to 3 step tasks, with no detail and with only occasional changes in the work setting  
19 and superficial contact with the public and co-workers. Tr. 49. The  
20 Commissioner did not err by so finding in this case.

### 21 CONCLUSION

22 Having reviewed the record and the ALJ's findings, the Court concludes the  
23 ALJ's decision is supported by substantial evidence and is not based on legal error.  
24 Accordingly,

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25  
26 <sup>7</sup>Dr. Brown's examination revealed Plaintiff's overall mental status  
27 examination results "were normal with a score of 28 out of 30." Tr. 24. Plaintiff  
28 also "scored in the normal range" on her Trails A & B test. Tr. 24.

**IT IS ORDERED:**

1. Defendant's Motion for Summary Judgment, **ECF No. 18**, is **GRANTED**.
2. Plaintiff's Motion for Summary Judgment, **ECF No. 16**, is **DENIED**.  
The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for **DEFENDANT** and the file shall be **CLOSED**.

DATED November 5, 2013.



A handwritten signature in black ink, appearing to be "M", is written over a horizontal line.

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE